

REMARKS

The present response is to the Office Action mailed in the above-referenced case on July 31, 2007, made final.

Rejection; Double Patenting

Claims 1-7, 11-17, 21, 23-26 and 28-30 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 and 11-17 of U.S. Patent No. 6,650,660.

Applicant's response:

Applicant herein provides a timely filed Terminal Disclaimer in compliance with 37 CFR 1.321(c) to overcome the rejection.

Merit Rejection 35 U.S.C. 102(b)

Claims 1, 11, 21 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Bremer et al. (U.S. 6,032,190) hereinafter Bremer.

Examiner's Rejection

Regarding claims 1, 11, 21, and 26:

Bremer et al. disclose a method for processing packets of data comprising the steps of: splitting each packet into a first portion and a second portion; associating a first code with the first portion of data for each packet; associating a second code with the second portion of data for each packet; for each packet of data, storing the first portion of data and its associated first code; for each packet of data, storing the second portion of data and its associated second code (col. 5 line 66 to col. 6 line 10 recite the data packet being split into the header portion and the data portion whereby the header portion and the additional information added being stored in store 64 and the data portion in memory 66;

furthermore col. 5 lines 19-41 recite to ensure that the portions can be later reunited a descriptor is stored along with the portion clearly anticipate the associated code) and retrieving one of the first portions of data and its associated first code, retrieving one of the second portions of data and its associated second code, determining by the codes whether the first and second portions of data were generated from the same packet of data, and if the first and second portions of data were generated from the same packet of data, combining them to regenerate the packet of data (col. 6 lines 11-17 recite the DMA reuniting the header portion with its appropriate data portion clearly reads on retrieving the two portions of the data and combining them to regenerate the data packet as claimed)

Applicant's Response:

Applicant argues that the art of Bremer fails to teach every element of applicant's independent claims which is required to prove a valid prima facie rejection under 102(b). Applicant presents claim 1 as an example:

1. (Previously presented) A method for processing packets of data comprising the steps of:

- splitting each packet into a first portion and a second portion;
- associating a first code with the first portion of data for each packet;
- associating a second code with the second portion of data for each packet;
- for each packet of data, storing the first portion of data, and its associated first code;

- for each packet of data, storing the second portion of data and its associated second code; and

- retrieving one of the first portions of data and its associated first code, retrieving one of the second portions of data and its associated second code, determining by the codes whether the first and second portions of data were generated from the same packet of data, and if the first and second portions of data were generated from the same packet of data, combining them to regenerate the packet of data.

The Examiner states that Bremer teaches associating a first code with the first portion of data for each packet; associating a second code with the second portion of data for each packet; for each packet of data, storing the first portion of data, and its associated first code; for each packet of data, storing the second portion of data and its associated second code; (col. 5 line 66 to col. 6 line 10 recite the data packet being split into the header portion and the data portion whereby the header portion and the additional information added being stored in store 64 and the data portion in memory 66; furthermore col. 5 lines 19-41 recite to ensure that the portions can be later reunited a descriptor is stored along with the portion clearly anticipate the associated code)

Applicant argues that Bremer fails to teach a code associated with each portion of the split data packet, the associated code being stored with each portion of data, as claimed. Applicant reproduces the portion of Bremer, relied upon by the Examiner, below:

“A data packet entering the media card from a media port has a header portion and a data portion. The header portion contains information about the data packet such as the address of its destination, the type of media it is being transmitted over and other characteristics about the data packet. The data portion contains the actual data being communicated. The details of the header portion and data portion will be described below. Once a data packet enters the media card at the ingress portion 40, the data packet is separated into the header portion and the data portion and each of these portions is transferred over a bus 46 to a header in store 48 and a data buffer memory 50, respectively. A direct memory access (DMA) controller 52 controls the transfer of data between the various components within the ingress portion 40. To ensure that the header portion can be later reunited with the correct data portion, a descriptor, stored with the header portion and separately from the data portion, may indicate which data portion is associated with each header portion. The header portion of the data packet in the header in store is transferred to a packet processor unit (PPU) 54 that determines the next hop network address for the data packet based on the information contained in the header portion, as described below.” (Col. 5, lines 19-41)

As clearly understood from the above portion of Bremer, a single descriptor is stored with the header portion and relied upon to re-associate the header portion with the data portion of the packet. Applicant argues that claims 1, 11, 21 and 26 clearly recite that a first code is associated with and stored with a first portion of data and a second code is associated with and stored with a second portion of the data packet. Therefore, the single descriptor stored with a single portion of the packet (header) in Bremer cannot anticipate the two portions of code stored with two portions of data, as claimed in applicant's invention.

It appears to applicant that the examination in this case is following the old path of investing prior art status in inventions that accomplish the same or a similar purpose as the invention in examination, rather than following the principle that it is the actual limitations of the claim that must be found in the art. The Examiner in this case relies on the general ability of Bremer to split a packet header from the data portion of the packet, and storing the header with a descriptor, to anticipate creating and storing a code with each portion of the packet, as claimed. The problem with this approach in examination is that the rejections are not *prima facie*, in that they do not teach the actual physical and functional limitations of the claimed apparatus and method. They only teach accomplishing a similar purpose.

Applicant believes, as argued above, that independent claims 1, 11 21 and 26 are easily patentable over Bremer. Claims 2-7, 12-17, 23-25 and 28-30 are patentable on their own merits, or at least as depended upon a patentable claim.

Allowable Subject Matter

6. Claims 2-7, 12-17, 23-25 and 28-30 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims and a terminal disclaimer filed to overcome the nonstatutory double patenting rejection.

Applicant's response:

Applicant, at this time, chooses not to take advantage of the allowable subject matter indicated by the Examiner. Applicant believes the independent claims are patentable on their own merits over the art of Bremer, as argued above.

Summary

As all of the remaining claims have been shown to be patentable over the Examiner's rejections, applicant respectfully requests reconsideration and the case be passed quickly to issue.

If any fees are due beyond fees paid with this response, authorization is made to deduct those fees from deposit account 50-0534. If any time extension is needed beyond any extension requested with this amendment, such extension is hereby requested.

Respectfully Submitted,
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